

BEFORE THE 2004 presidential election, a homeowner in Bordentown Township, N.J., was fined \$600 by his homeowners association for planting a Bush-Cheney sign in his yard.

A dozen or so political yard signs pop up every election season in one Montclair, Va., community, despite the association's ban on such signs. But they're usually removed after violation letters are sent, association board members say.

Residents' desires to express their political views frequently collide with association boards' attempts to regulate the appearance of their communities.

As the Nov. 4 general election draws near, those free-speech battles may occur more frequently if many previously uninvolved voters are energized by this historic election as predicted. While some of your community's residents may work the telephones or help transport voters to the polls, some will undoubtedly choose to express their views by placing political signs in their yards.

Association boards often restrict signs for the same reasons that local

EXPRESS YOURSELF

Political signs are a protected form of speech under the U. S. Constitution. Since a 1994 U.S. Supreme Court ruling declared a Missouri city law prohibiting signs at private residences unconstitutional, many cities have found it difficult to defend similar restrictions in court. In addition, state constitutions also contain free-speech protections that are often interpreted more broadly by state courts.

However, community associations have greater discretion in setting restrictions on signs because they aren't government entities and, as a result, are not bound by the same constitutional restrictions that limit governmental regulation. While several courts have said community associations may not ban political signs outright, they have permitted association boards to impose reasonable restrictions on such signs.

In 1996, the Pennsylvania Superior Court rejected a couple's challenge of their condominium association's rule prohibiting all signs without prior ap-

proval from the association's executive board. Ronald and Sondra Cappuccio sued the Midlake on Big Boulder Lake Condominium Association on First Amendment grounds for the right to place "for sale" signs in their condominium windows. But the court rejected their arguments.

The court gave greater weight to an individual's freedom to enter into contractual relationships than to free-

speech rights. "The Cappuccios contractually agreed to abide by the provisions in the declaration at the time of purchase, thereby relinquishing their freedom of speech concerns regarding placing signs on this property," the court ruled.

While the case didn't involve political signs, the First Amendment concepts still apply: Pennsylvania homeowners, who purchase in a community governed by a declaration or other association rules, may contractually agree to limit or give up their First Amendment rights.

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DUBIE

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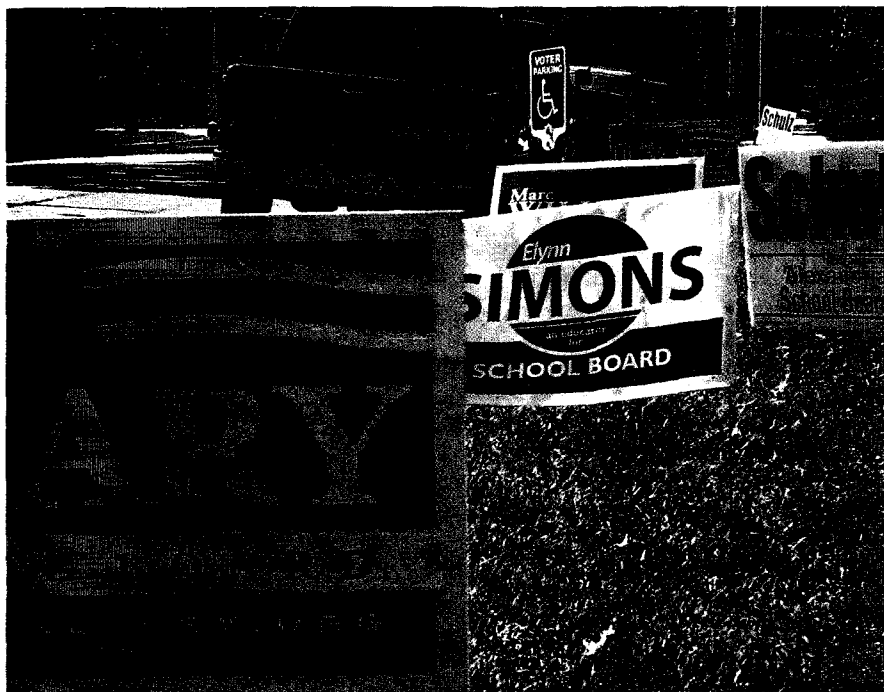
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governments do. Some worry that a multitude of signs will detract from the appearance of the community and, ultimately, harm property values. Or perhaps the signs are deemed safety hazards. Once the board decides whether to regulate political signs on private property, the challenge is to figure out how to do so reasonably, without being drawn into acrimonious and expensive litigation with residents.

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home Twin Rivers community in central New Jersey. The homeowners sued in 2000 challenging restrictions on political signs, community room fees and newsletter content. A trial court ruled in favor of the association, but an appeals court overturned that decision ruling the right to free speech guaranteed in the state constitution "must take precedence over private property interests." But the state Supreme Court



SIGN OF THE TIMES. As the November election approaches, more political campaign signs such as these in Alexandria, Va., will be dotting the landscape, and conflicts over attempts to regulate them can be expected to increase.

found otherwise. That court ruled that “the minor restrictions on plaintiffs’ expressional activities are not unreasonable or oppressive...,” and that the association’s rules didn’t violate the freedom of speech and assembly clauses of the state constitution.

In the New Jersey case, the court didn’t consider whether the association was a “state actor” to determine whether homeowners’ constitutional rights were violated under the state constitution. State action is not required for applying the free-speech rights in the New Jersey Constitution. The New Jersey Supreme Court employed a three-part test to balance the homeowners’ free-speech rights against private property rights. What is the primary use of the property? What is the extent of the public’s invitation to use that property? What is the purpose of the free-speech activity in relation to both the private and public use of the property?

While the court ruling only applies to associations in New Jersey, it is being used as a guide in other states to determine what rules are considered reasonable by the courts. The Twin Rivers board limited signs to one in every window and one in each lawn. It prohibits signs on utility poles in the community.

LEGISLATIVE LANDSCAPE

In recent years, several states have enacted legislation granting greater rights to community association residents to display political signs. For instance, Arizona law now states that community associations may not prohibit the indoor or outdoor display of a political sign within 45 days of an election and seven days after an election. However, they may regulate the size and number of political signs as long as their rules aren’t more restrictive than the town or county.

In North Carolina, political signs are permitted unless the association’s declaration was recorded before Oct. 1, 2005, and expressly prohibits political signs. But even if recorded after that date, signs are allowed unless the declaration states on the first page in all capital and bold letters that “this document regulates or prohibits the display of political signs.” Like Arizona, North Carolina associations also may limit the time, size and number of signs a homeowner may place on his or her property as long as the restrictions are not more restrictive than local ordinances. Colorado’s Common Interest Ownership Act also permits associations to regulate where and when signs may be displayed, along with how many

and what size. Maryland, Kansas and Washington state also allow residents in community associations to display political signs with some association restrictions.

A similar bill in Virginia failed two years ago after CAI’s state legislative action committee opposed it, arguing it would weaken homeowner associations’ authority. “As long as we’re not infringing on anyone’s constitutional rights, or doing anything unlawful, we should be allowed to continue to deal with it on a local level,” says Doug Taggart, treasurer of the Montclair Property Owners Association, who opposed the bill.

However, Chris Casey, who now serves with Taggart on the association’s board, supported the bill. He argues his association’s ban on political signs violates his free-speech rights. As a resident of a property owners association, he says, “I’m less protected than the rest of Virginians, and I’m less protected than the rest of Americans.”

WITHIN REASON

So how does an association board protect property values, while also permitting individuals to participate in the political process by displaying yard signs on behalf of their favorite candidates? If the association already has regulations in place, ask the association’s attorney to review those regulations to determine whether courts would find them reasonable in the event they are challenged.

Rules are reasonable if they are content neutral. Instead of restricting



the content of the message, the rules should focus on the manner in which that message is communicated. For example, restrictions that courts have found acceptable include those that specify the size and location of signs as well as how long the signs may remain.

The attorney should analyze an association's rules against both federal

imposed by local government officials, the board members must follow the local regulations.

■ Don't prohibit political signs without exception. If the association's regulations are reasonable, content neutral and consistently enforced, the board is more likely to avoid expensive litigation and preserve the delicate balance be-

■ Approach enforcement reasonably and in a way that encourages compliance rather than acrimony or litigation. Don't feel compelled to measure the size of everyone's yard signs. If a sign obviously violates the size restrictions, then proceed with enforcement.

The right to express political views during campaign season is one of the

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LEGISLATION GRANTING GREATER RIGHTS

TO COMMUNITY ASSOCIATION PRESIDENTS

to display political signs.

and state free-speech rights. If an association determines that its regulations are reasonable in terms of time, place and manner, the board should ensure they are enforced reasonably and consistently. If an association regulates when signs may be planted and when they must be removed, the board should make every effort to be reasonable in enforcing these regulations. If someone plants a sign a few days early, consider sending the offending resident a friendly reminder describing the sign regulations rather than a notice of violation threatening fines and legal action if the violation is not corrected.

If an association's covenants don't currently regulate the display of political signs or if it is in the process of drafting new rules, consider the following checklist to ensure the proposed rules don't violate constitutional or statutory requirements:

- Consult state statutes. State law may already provide the maximum restrictions allowed. If the state regulates political signs in community associations, the association's rules must be consistent with state law.
- Know the local town or county sign regulations. If state statutes or court decisions don't allow association regulations to be more restrictive than those

tween the community's aesthetic values and individuals' free-speech rights.

■ Remind residents of sign rules prior to election season or when they become effective. Use the association newspaper, website, a letter or a community meeting to remind residents of the rules at least 15 to 30 days before signs may first be displayed.

■ Don't forcibly remove signs. This should be done only as a last resort because it will likely result in hard feelings and unnecessary litigation.

ATA-GLANCE

Residents' desires to express their political views may collide with association rules during election season.

EXPRESS YOURSELF. Political signs are a protected form of speech under the U.S. Constitution, but courts have given community associations greater discretion than local governments in restricting them.

LEGISLATIVE LANDSCAPE. In recent years, several state legislatures have granted residents living in associations more rights to display signs.

WITHIN REASON. Don't prohibit signs altogether or attempt to restrict their content. Reasonable limits on the size, location and duration of display are more likely to be upheld in court.

most important and time-honored constitutional rights that Americans enjoy. Even if the state permits associations to ban political campaign signs, such bans may create acrimony between residents and association boards and could spur lengthy and expensive legal battles.

The better course is to craft content-neutral regulations that reasonably restrict the time, place and manner in which political signs may be displayed. In the end, the community will likely be more attractive to residents if the association successfully strikes an effective balance between recognizing important constitutional rights and preserving the aesthetics and property values of the community at large. **cg**

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RESOURCES: *BE REASONABLE! HOW COMMUNITY ASSOCIATIONS CAN ENFORCE RULES WITHOUT ANTAGONIZING RESIDENTS, GOING TO COURT, OR STARTING WORLD WAR III*, BY KENNETH M. BUDD. RETAIL: \$22. CAI MEMBERS: \$13.20.

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YOUR TURN: How has your community handled a free-speech controversy? Send a letter to *Common Ground*, 225 Reinekers Lane, Suite 300, Alexandria, Va. 22314. Fax: (703) 684-1581. E-mail: commonground@caionline.org.